United Nations A/C.5/59/SR.27

General Assembly
Fifty-ninth session
Official Records

Distr.: General
3 December 2004

Original: English

Fifth Committee

Summary record of the 27th meeting
Held at Headquarters, New York, on Wednesday, 24 November 2004, at 10 a.m.

Chairman: Mr. MacKay ..... (New Zealand)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Kuznetsov

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04-62313 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 120: Administration of justice at the United Nations (A/58/300 and A/58/680; A/59/70, A/59/78, A/59/280 and Corr.1 and Add.1, A/59/408, A/59/414 and A/59/449; A/C.5/58/16; A/C.5/59/12)

1. **Mr. Nair** (Under-Secretary-General for Internal Oversight Services) introduced the report of the Office of Internal Oversight Services on the management review of the appeals process at the United Nations (A/59/408), which was submitted pursuant to General Assembly resolution 57/307. In that resolution, the Assembly had requested that the report of the Office of Internal Oversight Services (OIOS) should include measures to shorten the period required for the disposal of cases, including imposing deadlines at all stages of the process, and that the review should examine not only the procedures and functions related to the Joint Appeals Board but also those related to the Panel of Counsel, the Administrative Law Unit and the secretariats of the Board and the Joint Disciplinary Committee, as well as their impact on and contribution to the administration of justice. In performing the review, the Office had focused on procedural and institutional matters. Accordingly, the findings could be grouped into four main categories: the time taken to complete the process; the resources available to the respective parties; the institutional roles played by the various entities in the process; and training and communication.

2. With respect to the time taken to complete the process, which could be as long as 27 to 37 months, OIOS had found that the appeals process at most duty stations could be streamlined to make it shorter. The delays identified were attributable to gaps in the formal guidelines governing the timelines for the process and bottlenecks in productivity caused by insufficient resources. The Office had therefore recommended specific timelines for the appeals process and accompanying measures to remove bottlenecks and increase productivity.

3. Regarding the resources available to the respective parties, OIOS had found that respondents, in other words the Administration, had available to them the five staff members, including one P-5 and two P-4s, who comprised the Administrative Law Unit of the Office of Human Resources Management, while appellants, specifically staff members, had only the two General Service staff members and the volunteers provided through the Panel of Counsel available to them. Appellants had to pay the cost of any outside legal assistance they engaged, whereas respondents' legal costs were borne by the Organization. The Office had recommended that measures should be considered to strengthen the resources available to appellants, such as the recruitment of professional staff for the Panel of Counsel.

4. Concerning the institutional roles played by the various entities in the process, OIOS had found that the Department of Management served as respondent, in its capacity as the representative of the Secretary-General, while also taking decisions on the recommendations of the Joint Appeals Board Panel on behalf of the Secretary-General. The Office had recommended clarification of accountability and measures to mitigate that potential conflict of interest.

5. As to training and communication, OIOS had found that there were shortcomings in the training provided to members of the Joint Appeals Board and the Panel of Counsel and that there was scope for improving the access of staff to information about the status of appeals through secure electronic means.

6. OIOS had issued 18 recommendations to improve the appeals process at the United Nations, most of which had been accepted by management. It would continue to monitor the implementation of those recommendations.

7. **Mr. Halbwachs** (Controller) introduced five reports on the administration of justice at the United Nations. The report of the Secretary-General on the administration of justice in the Secretariat (A/59/449) was submitted pursuant to General Assembly resolution 57/307, in which the Assembly had welcomed the initiative taken by the Secretary-General in requesting OIOS to conduct a management review of the appeals process and had requested the Secretary-General, taking due account of the findings of OIOS, to report on alternatives for strengthening the administration of justice. In addition, it had requested the Secretary-General to develop, as a matter of priority, an effective system of personal responsibility and accountability to recover losses to the Organization caused by management irregularities. It had further requested the Secretary-General to undertake an in-depth analysis of the development of comprehensive legal insurance schemes to cover legal advice and

representation for staff, to strengthen the Panel of Council and to provide statistics on the disposition of cases and information on the work of the Panel.

8. The report before the Committee focused on the management review of the appeals process, as well as providing information requested by the Assembly. As indicated in the report, the Secretary-General agreed with the majority of the recommendations of OIOS, which would, when implemented, result in a streamlined, transparent and more efficient appeals process and at the same time uphold the Organization's commitment to a process that was fair and effective. With respect to alternatives for strengthening the administration of justice, the report focused on measures to address the delays in the appeals process, training and communication, and cooperation and accountability of managers. It proposed a number of improvements, while concluding that the internal recourse system did not require a radical overhaul to make it more effective.

9. The report of the Secretary-General on the administration of justice in the Secretariat: role of the Panels on Discrimination and Other Grievances (A/59/414) was also submitted pursuant to General Assembly resolution 57/307. The Panels had been established in 1977 as an informal grievance procedure. However, they had not functioned as intended. The Secretary-General had therefore proposed their replacement by an ombudsman system. The General Assembly, at its fifty-sixth session, had decided to establish the position of Ombudsman but had not taken a final decision on whether the Ombudsman function should replace the Panels, as originally proposed by the Secretary-General. Rather, it had requested the Secretary-General, in consultation with the Ombudsman and staff representatives, to submit detailed proposals on the role and work of the Panels for its consideration.

10. The Ombudsman had requested a team of practitioners trained in organizational dispute resolution to assist her Office in examining several options concerning the future role of the Panels. The team had recommended, as its preferred option, the reconstitution of the Panels into joint grievance committees, which would maintain some of the unique features of the Panels, in particular, their peer-review function. That option was presented in the report as Option 2. Option 1 would consist in the elimination of the Panels with no further action, as initially recommended by the Secretary-General.

11. The reports contained in documents A/58/300 and A/59/70 provided information and data on the outcome of the work of the Joint Appeals Boards in New York, Geneva, Vienna and Nairobi for the years 2001 to 2003. The reports indicated the number of appeals filed and disposed of by the Boards during those years. Information and data were also provided on the decisions taken by the Secretary-General on Joint Appeals Board recommendations.

12. In its resolution 57/307, the General Assembly had requested the Secretary-General to take steps to ensure the independence of the United Nations Administrative Tribunal and the separation of its secretariat from the Office of Legal Affairs and to study the possibility of its financial independence. In the report of the Secretary-General on the possibility of the financial independence of the United Nations Administrative Tribunal from the Office of Legal Affairs (A/59/78), it was proposed that the resources related to the Tribunal should be transferred from section 8 (Legal affairs) to section 1 (Overall policy-making, direction and coordination) as from the beginning of the next biennium. That would bring the Tribunal and its secretariat into line with comparable subsidiary organs of the General Assembly, including the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the Board of Auditors, which were financially and operationally independent but for which budgetary provisions were reflected in section 1 of the programme budget.

13. **Mr. Barboza** (President of the United Nations Administrative Tribunal) introduced the comprehensive report on the activities of the United Nations Administrative Tribunal (A/58/680), which was submitted pursuant to paragraph 23 of General Assembly resolution 57/307. The report provided information on the composition, jurisdiction, functioning and work of the Tribunal, including a general overview. In the general overview, the Tribunal noted with interest the establishment of the Ombudsman's Office to facilitate conflict resolution and other efforts made within the system of administration of justice to reduce the time taken for cases to reach the Tribunal, which currently ranged from two to three years. It also referred to the matter of Tribunal independence, which must be resolved in order to enhance confidence and trust in the process on

the part of both employees and management. It noted, in particular, the proposal to separate the budget of the Tribunal's secretariat from that of the Office of Legal Affairs. Other matters of concern were the issues of specific performance and the level of compensation awarded, which were under discussion by the General Assembly. The Tribunal supported the strengthening of the existing system and saw no great merit in modifying the system or in creating a new one. It supported the proposals made by the Joint Inspection Unit and the Advisory Committee in that regard. Lastly, it stressed the importance of presenting an annual report to the General Assembly in order to keep the Assembly informed of emerging jurisprudence and of the main conflicts that erupted between the Administration and staff members.

14. **Mr. Vislykh** (Joint Inspection Unit), speaking via videoconference from Geneva, introduced the report of the Joint Inspection Unit on administration of justice: harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal (A/59/280). For almost 25 years, the General Assembly had expressed concern about deficiencies in the current system of administration of justice at the United Nations. In its resolutions, it had recognized that the system was slow, cumbersome, costly and unfair, even discriminatory. In response to those concerns, the Joint Inspection Unit (JIU) had produced a number of reports containing specific proposals for remedying that situation. In one such proposal, it had emphasized the need to eliminate the major discrepancies between the statutes of the United Nations Administrative Tribunal and the International Labour Organization (ILO) Administrative Tribunal. In its resolution 57/307, the Assembly had requested JIU to continue to study the possibility of harmonizing the statutes of the two Tribunals, bearing in mind the information contained in paragraphs 39 to 42 of the report of the Secretary-General on the administration of justice in the Secretariat (A/56/800).

15. The issue of harmonization had been on the Organization's agenda for too long and, over the years, had become unnecessarily complicated, to the detriment of the administration of justice at the United Nations. Now, both the General Assembly and the Secretary-General had made a public commitment to improve the internal justice system. Quick and decisive action was therefore necessary to bring the matter to a close. Such action would be simple to take: it would be sufficient to eliminate only those discrepancies between the two statutes that materially affected the administration of justice.

16. The Inspectors had identified three such discrepancies. First, the ILO Administrative Tribunal consisted of professional judges, whereas the requirements for appointment to the United Nations Administrative Tribunal were less strict. That might give the impression that its politically appointed members were not bound by the same rigorous professional ethics and were more susceptible to external influence. Second, the ILO Administrative Tribunal could order the rescission of wrongful decisions or the performance of unfulfilled obligations; the United Nations Administrative Tribunal could not, since the Secretary-General could choose whether to comply with the order for rescission. Regrettably, the Secretary-General almost never recognized that his decisions could have been wrong and, rather than rescind them, he preferred to pay compensation to affected staff members. Such payments were funded from the regular budget of the United Nations and thus from the pockets of Member States. In the Inspectors' view, the practice was not conducive to the establishment of a proper system of accountability and responsibility at the highest level. Third, the statute of the ILO Administrative Tribunal did not provide a specific limit on the monetary compensation that could be awarded to a claimant, whereas the statute of the United Nations Administrative Tribunal did. Again, that situation could give the impression that the United Nations Administrative Tribunal had less power than its counterpart. The Inspectors considered that all other differences between the two statutes were immaterial.

17. Based on their findings, the Inspectors were making four recommendations for specific action. First, the General Assembly was invited gradually to increase the number of professional judges among the members of the United Nations Administrative Tribunal. No amendment to the Tribunal's statute would be required. Second, it was recommended that the Assembly should amend article 10 of the statute of the United Nations Administrative Tribunal in order to settle the issues of specific performance and compensation limitations. Such an amendment would simply restore the provisions of the original statute adopted by the General Assembly in 1949. It would have positive financial implications for Member States,

since it would most likely increase the number of wrongful decisions rescinded, leading to a reduction in the amount of compensation paid to staff members. Third, the Assembly was invited to take effective measures to streamline the slow and cumbersome internal justice process, for justice delayed was justice denied. That recommendation, too, would produce cost savings, since the amount of compensation paid to claimants was generally a function of the time taken to consider their appeals. Lastly, the Inspectors, while expressing support for the Secretary-General's initiative to improve cooperation between the United Nations Administrative Tribunal and the ILO Administrative Tribunal, invited him to expand such cooperation to include administrative tribunals of other intergovernmental organizations. That would increase the exposure of the United Nations Administrative Tribunal to best practices across the world. Those recommendations were easily implementable, would significantly improve the United Nations internal justice system and would be cost neutral or lead to cost savings.

18. **Mr. Rashkow** (Director of the General Legal Division), introducing the note by the Secretary-General on the report of the Joint Inspection Unit on administration of justice: harmonization of the statutes of the United Nations Administrative Tribunal and the International Labour Organization Administrative Tribunal (A/59/280/Add.1), said that the Secretary-General's position on the issue of harmonization was explained in document A/56/800 and remained valid vis-à-vis the recommendations contained in the JIU report. The most controversial recommendation was recommendation 2. The Secretary-General had previously expressed the view that the issue of specific performance should not be viewed in isolation and that other factors, notably the selection criteria, procedures and qualifications of Tribunal members, should also be taken into account. He would, however, be willing to reconsider his position if the statutes and practices of the two Tribunals were fully harmonized. Alternatively, the current system could be retained with an increase in the limit on compensation. The Secretary-General's views on the other recommendations of JIU were set out in the note before the Committee.

19. **Ms. Brzak-Metzler** (Office of Human Resources Management), introducing the note by the Secretary-General on compensation for officials other than Secretariat officials: members of the United Nations Administrative Tribunal (A/C.5/59/12), recalled that, in 2002, when the Advisory Committee had considered the gap between the statutes of the United Nations Administrative Tribunal and the ILO Administrative Tribunal, it had recommended in paragraph 13 of its report (A/57/736) that the United Nations Administrative Tribunal should be strengthened through an amendment to its statute requiring that candidates for the Tribunal should possess judicial experience in the field of administrative law or its equivalent in the candidate's national jurisdiction. In paragraph 16, it had suggested that, should the General Assembly accept its recommendation on judicial qualifications, proposals could be made by the Secretary-General regarding compensation. The Assembly had decided, in its resolution 58/87, to amend article 3, paragraph 1, of the Tribunal's statute. While the amendment had increased the requirements to be met by candidates for the Tribunal, it did not require judicial experience in all cases. If it was decided that members of the Tribunal should be compensated in a manner comparable to judges of the ILO Administrative Tribunal, the General Assembly might wish to consider the suggestion contained in paragraph 14 of the note by the Secretary-General.

20. **Mr. Kuznetsov** (Chairman of the Advisory Committee on Administrative and Budgetary Questions) said that, in addition to the reports now before the Fifth Committee, the Advisory Committee had also borne in mind the letter from the President of the United Nations Administrative Tribunal addressed to the Chairman of the Fifth Committee (A/C.5/58/16). It had consistently maintained that related subjects should be dealt with together and it therefore expected to issue one report covering all the documents under consideration.

21. Some of the Administrative Tribunal issues were not new: the Advisory Committee had already expressed itself on the issue of specific performance, the qualification of members, and their compensation. It had raised the issues now under discussion as far back as 1985. The Advisory Committee took the matter very seriously as it had a significant impact on staff morale and productivity and on the efficiency of the Organization, as well as a big financial impact. The problems mentioned in the report of the Secretary-General (A/59/449) were not new to the Advisory Committee and it therefore noted with much interest

the statement in paragraph 35 of that report that the internal recourse system did not require a radical overhaul and that the chronic delays and inefficiencies that had been its trademark were largely the result of inadequate resources in terms of both staffing and training.

22. It was regrettable that the Secretary-General had not followed that statement with proposals for the resources needed. Without a proper analysis of what was required, the Advisory Committee was unable to make the necessary recommendations to the General Assembly. It had therefore requested the Secretariat to prepare an addendum to the report which would lay out the resource requirements for dealing with the backlog and for the ongoing administration of the internal justice system. The addendum should include a clear justification of the need, as well as a full account of what would be achieved through the provision of additional resources. It should also indicate the extent to which such resources could be obtained through redeployment.

23. In addition to reverting to the issue when the addendum was to hand, the Advisory Committee was to meet with representatives of the ILO Administrative Tribunal and other officials to obtain a better insight into the operation of the internal justice systems in other United Nations organizations. It would be its intention to complete that work before the end of the current session.

24. **Ms. Udo** (Nigeria) wondered if the remarks of those who had just introduced the issues for consideration under agenda item 120 could be supplied in written form.

25. **The Chairman** said that arrangements would be made to do so.

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26. **Mr. Halbwachs** (Controller), introducing the report of the Secretary-General on biennial budgeting at the Tribunals (A/59/139), said that the Secretary-General proposed that the General Assembly should retain the biennial format for the reasons set out in paragraphs 5 to 11 of the report: mainly that the preparation of annual budgets placed a big burden on both the Secretariat and the Member States. The annex to the report contained a letter from the Chairman of the Board of Auditors concurring with that proposal.

27. Introducing the first performance report of the International Tribunal for the Former Yugoslavia for the biennium 2004-2005 (A/59/547), he said that the report included both technical adjustments of the first performance report, the requirements of the Investigations Division for 2005, and a one-time adjustment reflecting savings accruing owing to economy measures applied during 2004. When approving its initial appropriation for the Tribunal, the General Assembly had decided to defer consideration of the requirements for the Investigations Department and had requested the Secretary-General to resubmit his proposal at the current session. The report reflected an additional requirement of $26.8 million, net of staff assessment, broken down into three components: $22.5 million owing to variations in the budgetary assumptions; $12.9 million for the Investigations Division for 2005; and a one-time adjustment of $6.7 million reflecting projected savings. The variations in budgetary assumptions included the impact of changes in the exchange rate, a reduction owing to inflation, and an adjustment to salary standard costs. The Secretary-General proposed provision for the continuation of 148 posts in the Investigations Division from 1 January 2005, a reduction from the current level of 215 posts. As of 1 July 2005, there would be a further reduction of 12 posts. The post requirement was $11.9 million, with $2.2 million for staff assessment.

28. In order to allow the Appeals Unit to keep pace with the expected increase in the number of post-judgement appeals, the Secretary-General proposed that it should have two additional P-5 posts, to be redeployed from the Investigations Division. He also

requested approximately $1 million for investigative travel in 2005.

29. Table 1 showed the changes in projected expenditures and income by component and main determining factors, and Table 2 showed the changes by object of expenditure and main determining factors. He drew attention to the information contained in annexes I to V to the report.

30. Introducing the first performance report of the International Criminal Tribunal for Rwanda for the biennium 2004-2005 (A/59/549), he said that it showed an additional requirement of $18.2 million, net of staff assessment, again broken down into three components: variations in budgetary assumptions ($10.7 million); resources for the Investigations Division for 2005 ($12.5 million); and a one-time adjustment reflecting projected savings ($5 million). For the Investigations Division the Secretary-General proposed continuation of the staffing component of 106 posts approved for 2004 and $550,000 for investigative travel. Tables 1 and 2 were structured in the same way as the corresponding tables for the International Tribunal for the Former Yugoslavia. He drew attention to the information contained in the annexes.

31. The financial problems of the two Tribunals were familiar to the Committee. He had to draw attention yet again to the shortfall in the contributions which were due from a large number of Member States. The Secretariat had had no choice but to impose a recruitment freeze and other economy measures, which were having a negative effect on the work of the Tribunals and placed an additional strain on their staff members. There had been some positive developments: some payments had been received and many statements had been made in the General Assembly commending the work of the Tribunals and stressing its importance. But such positive statements had not always been translated into deeds. The amount of the unpaid contributions was $32.8 million for the Tribunal for the Former Yugoslavia and $26.7 million for the Rwanda Tribunal. In each case more than 100 Member States were in arrears. The Member States must honour their financial obligations if the Tribunals were to implement their completion strategies: they held the future of the Tribunals in their hands.

32. **Mr. Saha** (Vice-Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the Advisory Committee's report on the financing of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/59/561), said that both Tribunals were covered in the same document because, in an off-budget year, the issues affecting them were the same.

33. Turning first to the Advisory Committee's consideration of the report of the Secretary-General on the biennialization of the budgets of the Tribunals (A/59/139), he said that biennial budgeting, which had been introduced in the biennium 2002-2003, had saved time and effort. It had provided greater scope for planning, management and coordination, and helped programme managers to focus on the longer term, including completion strategies. The Advisory Committee supported the Secretary-General's proposal that the biennial format should be maintained for the Tribunals' budgets.

34. The primary purpose of the Tribunals' first performance reports for the biennium 2004-2005 (A/59/547 and A/59/549), in the light of biennial budgeting, was to identify any adjustments required because of inflation and exchange-rate variations and because of changes in the standards assumed in the calculation of initial appropriations. Although the economy measures introduced during 2004 had produced savings, the Advisory Committee was concerned that the current recruitment freeze would have a significant negative impact on the schedules of the Tribunals' completion strategies, particularly in the light of the serious and persistent staff vacancy situation. It had explained that negative impact in an annex to its report.

35. The Advisory Committee recommended approval of the requests for resources for the Investigations Divisions of the Tribunals, on the basis of the proposed requirements submitted in response to the requests from the General Assembly in its resolutions 58/253 and 58/255. It welcomed the active cooperation between the Tribunals regarding reform of their legal aid systems.

36. Having considered the reports of the Board of Auditors on the Tribunals (A/59/5/Add.11 and Add.12), the Advisory Committee wished to point out the need for swift disciplinary action in cases of proven fraud. It had noted the acceptance by the International Tribunal for the Former Yugoslavia of the Board's recommendations regarding premises in Sarajevo, and

trusted that the Tribunal would take the necessary action.

37. **Mr. Zellenrath** (Netherlands), speaking on behalf of the European Union, the candidate countries (Bulgaria, Croatia, Romania and Turkey), the stabilization and association process countries (Albania, Serbia and Montenegro and the former Yugoslav Republic of Macedonia), and, in addition, Liechtenstein, said that the European Union remained concerned about the rising budgets of the two Tribunals and the slow progress of their work. One of the reasons why the General Assembly had deferred consideration of the resources for the Investigations Divisions was the need for the Tribunals to demonstrate that resource bids were being made in conformity with their completion strategies. The restructuring of the Investigations Division of the International Tribunal for the Former Yugoslavia was welcome, and the International Criminal Tribunal for Rwanda was urged to introduce a system of lump-sum remuneration for defence counsel. Both Tribunals were commended for the savings made in 2004; such efforts should continue even after the financial constraints had eased.

38. The Tribunals still had some way to go in achieving their completion strategies, as a result, for example, of the complexity of the appeals work and the frequent emergence of new witnesses and documents. The Board of Auditors had highlighted that point and called for a combined completion strategy for the Appeals Chamber to streamline the process within the judicial constraints.

39. It was worrying that most of the 16 persons charged by the Rwanda Tribunal would never be brought to trial. Any Member States where such persons were present should cooperate with the Tribunal. Another source of concern was the inability of the Tribunal to make full use of ad litem judges to speed up the trial work. The Tribunal should also act expeditiously on the recommendation of the Board of Auditors for the establishment of a comprehensive fraud-prevention strategy.

40. The European Union had already expressed its great concern about the arrears of contributions to both Tribunals and was pleased to learn that the outstanding arrears had fallen from $130 million in August to $60 million. However, all Member States must pay their contributions in full and on time, for the considerable amount outstanding was still causing difficulties for the Tribunals. Given the improvement of the financial situation, the European Union would like to know whether the recruitment freeze could be lifted. Apart from causing other difficulties, it was affecting the security of the staff and operations and had had a particularly severe impact on the Prosecution Divisions.

41. The European Union approved the proposal to maintain the biennial format for the Tribunals' budgets and was ready to endorse the reports before the Committee. It reiterated its strong support for the Tribunals' work.

42. **Ms. Lock** (South Africa), speaking on behalf of the Group of African States, recalled that on 7 April 2004, the International Day of Reflection on the 1994 Genocide in Rwanda, a minute of silence had been observed for the victims of the genocide in order, in the Secretary-General's words, to send a message of remorse for the past and resolve to prevent such a tragedy from ever happening again. It was appropriate to reflect on the continuing role of the United Nations in helping the people of Rwanda to recover from those tragic events. The International Criminal Tribunal for Rwanda had handed down landmark verdicts which had sent out a message that there was no impunity for such heinous crimes. It was imperative for Member States to continue to translate political support into action and ensure that the two Tribunals received the necessary resources for the successful completion of their mandates.

43. It was therefore deeply regrettable that many Member States were in arrears in their contributions to the Tribunals: they could hardly judge the performance of the Tribunals if they did not provide them with the appropriate tools. The African Group had on several occasions expressed its reservations about the freeze on recruitment, especially as it had been imposed shortly after the General Assembly had approved increased staffing establishments; it also contravened the General Assembly's request that the vacancy rates should be reduced. Critical areas should be excluded from the freeze, so that the Tribunals would be able to complete their work on time. The Advisory Committee was right to say that a way should be found to ameliorate the current staffing situation of both Tribunals.

44. The African Group generally supported the Secretary-General's proposals in the first performance

report of the Rwanda Tribunal and welcomed the review of the completion strategy by the new Prosecutor, as well as the efforts to arrest the fugitives, revamp the tracking team, and appoint a completion strategy monitoring committee. It was evident that the Tribunal would have a heavy workload in 2005 and it must be given concomitant financial and human resources.

45. The management reforms and organizational restructuring were encouraging, but the large number of vacant posts and the indication that experienced staff members were leaving the Tribunals were worrying. A vigorous recruitment policy and the lifting of the freeze ought to ensure that the posts were filled quickly.

46. The African Group would welcome more information about the status of the security projects described in paragraphs 88 and 90 of the report of the Secretary-General on strengthening the security and safety of United Nations operations, staff and premises (A/58/756), together with an indication of whether the projects had been excluded from the recruitment freeze.

47. The intention to transfer at least 40 cases for trial in Rwanda would contribute both to the completion strategy and to reconciliation in Rwanda, but the Tribunal would have to continue to provide support to strengthen the Rwandan judiciary, and the budget proposals for the next biennium should provide for the costs of transferring trials to Rwanda and to other Member States.

48. The African Group welcomed the report on the outreach programme of the Rwanda Tribunal (A/59/549, annex III) and urged the Tribunal to continue to be innovative in implementing the programme.

49. **Ms. Ferguson** (Canada), speaking also on behalf of Australia and New Zealand, said that the process of instilling respect for the rule of law required Member States to live up to their commitment to support the institutions they had established to fight impunity for human rights violations. While Australia, Canada and New Zealand had shown their strong support for the two Tribunals by paying their assessments in full, on time and without conditions, the same could not be said of a large number of Member States. As a result, the Tribunals had been placed in an untenable financial position; the high level of arrears jeopardized not only the achievement of the completion strategies but also the ultimate success of their work. In that connection, she welcomed the recent efforts made by some delegations to pay their outstanding contributions and urged all others to follow suit.

50. The effects of the recruitment freeze, should it remain in force for much longer, were a cause for concern. Although perhaps unavoidable given the cash crisis affecting the Tribunals, the freeze was, at best, a short-term measure and the time had come to look for alternative solutions. She inquired whether the Secretariat could propose any other options in that regard.

51. Turning to the reports before the Committee, she welcomed the Tribunals' careful consideration of the need for investigative resources beyond 2004, particularly the pragmatic approach of the International Tribunal for the Former Yugoslavia involving both reduction and redeployment, and encouraged further efforts to that end in the future. While she welcomed the significant economies that had already been made by both Tribunals, she urged them to continue to do their utmost to ensure maximum efficiency and rigorous budgeting. As they moved towards the completion of their mandates, the two Tribunals must make every effort to operate within current budget levels.

52. Lastly, she said that the three delegations for which she spoke were concerned about the difficulties associated with staff retention at both Tribunals, a problem that would no doubt grow in scope as the completion strategies progressed. Ultimately, and particularly when taken in conjunction with the recruitment freeze, a continuous exodus could seriously handicap the ability of the Tribunals to complete their work within the envisaged time frame and could result in significant additional costs related to the hiring, installation and repatriation of staff. She encouraged the Secretariat to examine possible solutions to the problem and to develop concrete proposals for increasing retention levels.

53. **Ms. Zobrist Rentenaar** (Switzerland) said that, in view of the fact that the biennialization of the Tribunals' budgets had provided greater scope for planning, management and coordination of activities, a better focus for the work of the Tribunals and a more predictable work environment for their staff, her delegation supported the proposal to maintain a

biennial budget presentation. It also welcomed the detailed analysis of post requirements for the two Investigations Divisions for 2005 contained in the first performance reports of the Tribunals for the current biennium (A/59/547 and A/59/549) and approved the proposed staffing levels and the respective travel requirements.

54. While the Tribunals' commitment to the completion strategies set by the Security Council was encouraging, far too many Member States had failed to honour their financial obligations. She therefore urged those States that had not yet done so to pay their assessments in full, on time and without conditions. The precarious financial situation had resulted in severe cutbacks and a recruitment freeze which, as had been pointed out on several occasions by the Presidents and Prosecutors of the two Tribunals, was having a devastating effect on the work of the Tribunals, in particular their ability to retain their best staff.

55. The Office of the Prosecutor of the International Tribunal for the Former Yugoslavia had been particularly affected and the decimation of the Investigations Division had, to the detriment of the fundamental principles of justice and of victims throughout the region, jeopardized some investigations. That situation was undermining the credibility of the Tribunals and of international criminal justice as a whole. It was impeding the Tribunals' efficiency and would have a negative impact on the completion strategies.

56. Although she understood why the freeze had been imposed, it could not continue indefinitely. Given that the Tribunals themselves could not be held responsible for the non-payment of assessments and that a number of Member States had recently made substantial payments to the Tribunals, she wondered what benchmark would have to be reached before the freeze could be lifted. The Secretary-General should endeavour to lift it as soon as possible so that the Tribunals could carry out their mandates and comply with the completion strategy targets set by the Security Council.

57. **Ms. Ivanović** (Serbia and Montenegro) informed the Committee that her country would pay its outstanding contributions to the Tribunals in the near future and pointed out that its failure to pay any assessments to the Tribunals had been due solely to the difficult economic situation of the country and was in no way politically motivated.

58. Turning to the completion strategy for the International Tribunal for the Former Yugoslavia, she recalled that its two main pillars were the fair and expeditious completion of trials at the Tribunal in accordance with the timeline set for the completion strategy and the transition from international to domestic prosecution, achieved by the transfer to local courts in the region of certain cases under the Tribunal's rule 11 bis against accused persons who had been indicted by the Tribunal. While Serbia and Montenegro supported the completion strategy and was aware of its responsibilities in that regard, the referral of cases to domestic courts must be carried out in accordance with paragraph B of rule 11 bis, which referred to the need to ensure that the accused would receive a fair trial. To that end, Serbia and Montenegro had taken steps to improve the capacity of local courts and prosecutors' offices to comply with international standards and stood ready to cooperate further with the Tribunal.

59. **Mr. Iosifov** (Russian Federation) welcomed the Tribunals' recent efforts, in particular the internal reorganization measures and the reallocation of resources, to step up their work with a view to complying with the completion strategies. However, he expressed concern about their financial difficulties and the related problems concerning the recruitment and retention of staff. The world would judge the role played by the Tribunals in the administration of international justice by the results they obtained, and the successful completion of their work would depend, to a large extent, on Member States' fulfilment of their financial contributions. In that connection, he pointed out that the Russian Federation had recently paid its arrears to the International Tribunal for the Former Yugoslavia and had paid its assessments to the International Criminal Tribunal for Rwanda for 2004 on time.

60. His delegation had no objection to approving the proposed post requirements for the two Investigations Divisions and the travel costs associated with the pre-trial process. While it had taken note of the information about biennial budgeting at the Tribunals and the related comments of the Advisory Committee, his delegation took the view that, despite the expected decrease in the Tribunals' staffing and resource requirements as they moved towards the completion of

their work, it might be appropriate to return to annual budgeting, particularly since the General Assembly had, in recent years, considered the budgets in question on an annual basis.

61. **Mr. Kozaki** (Japan) said that, ten years after the establishment of the two Tribunals, question marks remained over whether or not the massive costs involved continued to be justified. He took the view that Member States could not fund the pursuit of justice indefinitely and, in that connection, he endorsed the Secretary-General's view that the stark differential between cost and number of cases processed by the Tribunals raised important questions.

62. The Tribunals needed to address concerns relating to the gap between cost and results in a convincing manner by providing information on achievements to date and measures being taken to enhance efficiency and effectiveness in the trial process. Such information must be shared with Member States as transparently as possible and, in that regard, his delegation would be particularly grateful for additional details about possible future measures. Adherence to the completion strategies was essential and, in that context, his delegation attached great importance to the gradual decrease of overall costs as the Tribunals moved towards the completion of their work.

63. In light of the recent commitments made by the Presidents of the two Tribunals to ensure and strengthen accountability to Member States, to make further efforts to rationalize the budgets and the work of the Tribunals and to adhere to the completion strategies and in the hope that its actions would encourage compliance with the latter, his Government intended to initiate immediately the procedures necessary to pay its outstanding assessed contributions for 2004 to the two Tribunals.

64. **Ms. Skaare** (Norway) reiterated the strong and continued support of her delegation for the work of the two Tribunals. The Tribunals made an important contribution to the search for truth and the fight against impunity for the most serious international crimes. They represented effective systems of international criminal law and would leave a legacy of international jurisprudence that could guide other courts and deter the commission of the worst crimes.

65. Although her delegation had previously expressed some doubts as to the desirability of maintaining biennial budgeting at the Tribunals, in the light of the Secretary-General's report on that issue and the related report of ACABQ — which argued, inter alia, that biennial budgeting would enable the Tribunals to focus more attention on long-term planning — it now endorsed the Secretary-General's conclusion that a biennial budget presentation should be maintained. A return to annual budgets might have a negative impact on staff morale and, by extension, on the completion strategies.

66. Both Tribunals had significantly increased their efficiency and were on schedule with their completion strategies. However, the implementation of those strategies could be threatened by the deeply worrying financial situation of both Tribunals. Member States had an obligation to ensure that both Tribunals were provided with the necessary resources approved by the General Assembly and she therefore appealed to all States that had not yet done so to pay their assessed contributions to the Tribunals as soon as possible. The difficult financial situation had led to a recruitment freeze, which was preventing the Tribunals from recruiting and replacing essential staff. In addition, they were having serious problems retaining qualified staff, particularly in the Prosecution Divisions, where the situation was bordering on critical. She shared the concerns expressed by ACABQ and the Board of Auditors in that respect and took the view that relief measures, including incentives to retain staff, must be addressed as a matter of urgency.

67. In 2003, her delegation had welcomed the adoption of Security Council resolution 1512 (2003), pursuant to which it had been decided to increase the number of ad litem judges at the Rwanda Tribunal from five to nine. She was therefore disappointed to learn that the additional four ad litem judges had arrived in Arusha as late as September 2004 because none of the permanent judges had been available to sit jointly with them. She also expressed concern about the large number of individuals who continued to evade justice and, in that regard, welcomed the adoption of Security Council resolution 1534 (2004) which reaffirmed the need to step up efforts to arrest and transfer the main fugitive indictees to the two Tribunals. Unless the highest-ranking indictees were brought to justice, the main mission of the Tribunals would not be fulfilled.

68. The eight trials currently in progress before the Rwanda Tribunal were taking place in only three

courtrooms; more courtroom capacity would therefore be an important element of the completion strategy. On account of the current budgetary constraints, the construction of an additional courtroom must be based on voluntary contributions and, in that connection, Norway had undertaken to finance that project as a practical demonstration of its continuing support for the Tribunal.

69. She welcomed the Tribunals' detailed analysis of the resource requirements for the Investigations Divisions for 2005 and commended their efforts to streamline and rationalize the work of those Divisions. The requirements were adequate for the effective implementation of the completion strategies and she therefore endorsed the Advisory Committee's support for the proposals. In closing, she stressed the need for continued close collaboration and coordination between the two Tribunals.

70. **Mr. Shalita** (Rwanda) said that his delegation wished to associate itself with the statement made by the representative of South Africa on behalf of the African Group. He congratulated both Tribunals on their ongoing efforts to improve efficiency and effectiveness and on the progress they had made in the implementation of their respective completion strategies.

71. The work of the Rwanda Tribunal was critical in supporting the efforts of the Rwandan Government to bring the perpetrators of genocide to justice, combat impunity and promote reconciliation and healing in Rwanda. It was therefore vital that it should continue to receive the support necessary to enable it to discharge its mandate in an effective manner. The late payment or non-payment of assessed contributions to the Tribunal had led to serious financial difficulties and a recruitment freeze, the effects of which were potentially devastating. For instance, the Office of the Prosecutor had only six staff and the Prosecution Division had 17 vacancies, including the post of Chief of Prosecutions, while the Investigations Division had 25 vacancies. The high vacancy rate would have a negative impact on the capacity of the Office to prepare and try cases at the pace envisaged in the completion strategy. There were also nine vacant legal officer posts in the Chambers; that meant that several permanent and ad litem judges were compelled to share legal officers, a practice that undermined their effectiveness and slowed the pace of work. The problems associated with the retention of staff were a cause for concern, particularly given the need to step up the pace of work in order to implement the completion strategy within the agreed time frame. He therefore called on the Secretariat to explore new ways of addressing the situation.

72. Member States could not expect the Tribunals to comply with their completion strategies while at the same time denying them the necessary resources to do so. If the goals outlined in the strategies were to be achieved, all Member States must pay their assessments on time, in full and without conditions.

73. The outreach programme of the International Criminal Tribunal for Rwanda was central to the Tribunal's overall mandate. He took note of the current and future outreach plans contained in annex III to the first performance report, but would encourage the Tribunal to be more proactive and effective, for example, by using the radio medium more aggressively and making better use of the information centre in Kigali. He welcomed the proposal to establish provincial information centres and expressed the hope that more educational materials would be made available in Kinyarwanda, the local language. As the Secretary-General had pointed out in his report, reliance on the traditional media was not enough to ensure the successful delivery of information and, in that context, the Tribunal must think laterally in order to surmount the challenges facing it.

74. When the Rwanda Tribunal was established, the transfer of cases to national jurisdictions was envisaged as central to the objective of bringing the perpetrators of genocide to justice. Taking into account the interests of the survivors, the imperative for reconciliation and the principle that justice should be rendered as close as possible to the victims and the place where the crimes were committed, the Tribunal had identified 41 cases for possible transfer to the Rwandan courts. While those transfers were extremely important to the reconciliation process and would have a positive impact on the implementation of the completion strategy, Rwanda would need support from the international community and the Tribunal in order to receive and try the transferred cases with the highest levels of professionalism and efficiency. In that connection, he commended the Tribunal for its existing training programmes for the Rwandan judiciary and called for those initiatives to be strengthened.

75. **Mr. Shiyo** (United Republic of Tanzania), associating his delegation with the statement made by the representative of South Africa on behalf of the African Group, expressed confidence in the organizational and management reforms at the Rwandan Tribunal. His delegation welcomed the most recent version of the completion strategy submitted to the Security Council on 30 April 2004, which indicated that it was on schedule to complete all trials by 2008, in accordance with Security Council resolution 1503 (2003), and it endorsed the Secretary-General's request for additional resources. It also called on all Member States to pay their assessed contributions in full and on time to enable the Rwandan Tribunal to fulfil its mandate. More flexible financial mechanisms, resources and tools would significantly facilitate rapid implementation of the completion strategy.

76. His delegation welcomed the efforts of the Rwandan Tribunal and the United Nations Development Programme (UNDP) to determine the economic and social viability of continued use of the facilities in Arusha once the Tribunal had completed its business there, and it hoped that the findings of their study would soon be made available to the Committee. As host country, the United Republic of Tanzania pledged to continue to work closely with the Tribunal. It had paid its assessed contributions in full, implemented the Host Country Agreement and addressed the Tribunal's needs through the Joint Facilitation Committee of Senior Representatives. It hoped that the Organization would see it as a reliable, friendly and secure base for future activities.

77. **Ms. Wang** Haijiao (China) said that she encouraged the two Tribunals to make progress with their completion strategies, completing investigations by the end of 2004 as envisaged and continuing to increase the number and efficiency of trials. She supported the transfer of cases to national courts established for that purpose and hoped that the Tribunals would seek closer cooperation with the countries concerned, as the Board of Auditors had recommended in its reports (A/59/5/Add.11 and Add.12).

78. The steadily deteriorating financial situation of the Tribunals continued to cause concern, as unpaid assessments at the end of 2003 had been 120 per cent higher than at the end of December 2001 for the International Criminal Tribunal for Rwanda and 76 per cent higher than at the end of December 2001 for the International Tribunal for the Former Yugoslavia. Though her delegation was aware that some Member States had recently paid their assessments for the Tribunals, it called on all Member States to honour their financial obligations by paying their assessments in full, on time and without conditions. China had paid its assessments in full, and would continue to do so. Finally, her delegation supported the view of the Advisory Committee that the Tribunals' budgets should continue to be presented in biennial form.

79. **Mr. Al-Zaabi** (Oman) said that his delegation endorsed the main findings of the Board of Auditors, explained in subparagraphs (b) to (h) of the summary of its report for the International Tribunal for the Former Yugoslavia (A/59/5/Add.12), and called on the Tribunal to take all necessary steps to implement the recommendations of the Board, especially those in paragraph 10 of the report, since their sole purpose was to help the Tribunal to complete its task by 2010.

80. His delegation would like further clarification of the Tribunal's expenditure in 2002-2003, in the light of the 36 per cent increase in expenditure for the biennium ending 31 December 2003 by comparison with the previous biennium, and in view of the costs of amici curiae ("friends of the Court"), which did not appear to have been limited, despite the recommendation to do so. Referring to the costs to the Tribunal resulting from some judges' absence or resignation owing to illness in 2002-2003, he said his delegation agreed with the Board's recommendation that medical standards for staff members of the Organization should also apply to candidate judges.

81. It also strongly supported the recommendation in paragraph 74 of the Board's report that coordination with the United Nations Administration should be stepped up in order to promote transparency and the use of best practices in preventing internal corruption. The timetable for the work of the Tribunal should also be more closely coordinated with the activities of international and regional organizations.

82. **Ms. Ebbesen** (United States of America) commended the two Tribunals for the clear and concise analysis, in their first performance reports for the biennium 2004-2005 (A/59/547 and A/59/549), of their financial situations and the resource requirements of their Investigations Divisions. Her delegation endorsed the related conclusions and recommendations of the Advisory Committee (A/59/561). The information on

outreach activities and the reform of the legal aid systems which the Tribunals had provided in response to General Assembly resolutions 58/253 and 58/255 was useful. In the case of outreach, her delegation welcomed the efforts to inform and educate the citizens of Rwanda and the former Yugoslavia about events happening hundreds of miles from their homelands. In the case of the reform of the legal aid systems, it encouraged the Registrar of the Rwandan Tribunal to adopt a lump-sum payment system to avoid fraud and control defence costs and encouraged the Tribunal for the Former Yugoslavia to adopt a similar system for the pre-trial phase to control costs and ensure that defendants had fair representation.

83. The Board of Auditors' conclusion that both Tribunals would miss the 2010 deadline for their completion strategies if current financial trends persisted was worrying. The Tribunals should currently be in a better position to manage their workload and resources in order to keep to that deadline, thanks to recent payments from major donors, including the United States of America, which had paid its assessments in full as of the first week of November 2004.

84. Her delegation agreed with the conclusion in the report of the Secretary-General on biennial budgeting at the Tribunals (A/59/139) that that practice would enable the two Tribunals to engage in more long-term planning, review and evaluation, activities which could highlight waste and areas where more cost-effective methods could be found. That was important, because the Tribunals would begin downsizing as investigations and trials came to an end. It endorsed the Advisory Committee's recommendations on the format of the budget.

85. **Mr. Sigtryggsson** (Iceland) said that Iceland, as a member of the European Free Trade Association and the European Economic Area, fully associated itself with the statement made by the representative of the Netherlands on behalf of the European Union.

86. **Mr. Simancas** (Mexico) said that his delegation welcomed Norway's readiness to make a voluntary contribution to pay for the construction of a fourth courtroom at the International Criminal Tribunal for Rwanda. At a time when many Member States were experiencing difficulties in paying their assessments, such measures would help the Tribunals to keep to their completion strategies and would assist the administration of justice.

87. **Mr. Elji** (Syrian Arab Republic), expressing agreement with the concern of the African Group over the recruitment freeze and the scaling-down of the Tribunals' work, said that his worries were increased by the view of the Advisory Committee that completion strategies would be affected. Noting the proposed restructuring of the Office of the Registrar of the Rwandan Tribunal and the Tribunal's amended completion strategy, he said he hoped that the Tribunal would speed up its work and apply the necessary sanctions. He called on all Member States to finance the work of the two Tribunals.

88. **Ms. Udo** (Nigeria) said that she welcomed the recent and forthcoming payments of assessments for the two Tribunals, and the announcement by Norway that it would finance the construction of a fourth courtroom for the Rwandan Tribunal. Such gestures encouraged the Tribunals and helped them to proceed with their work.

89. **Mr. Pulido León** (Bolivarian Republic of Venezuela) said that his Government had already made substantial payments of its assessments for the Tribunals and hoped to settle all its arrears by the end of the year.

90. **Mr. Halbwachs** (Controller) said that he shared the delegations' concerns about the serious financial situation of the Tribunals, whose staff wanted nothing more than to have enough resources to complete their work. The operation of the Tribunals had been impaired not by the recruitment freeze imposed on them but by the non-payment of assessments; they were the victim, not the cause.

91. On behalf of the Secretary-General, he wished to thank the Member States which had announced payments at the current meeting and hoped that Member States with arrears would follow their example. Those additional resources would help the Tribunals to return to normality from the beginning of 2005. He would provide further details in the informal consultations on the latest situation regarding the payment of assessments, measures to encourage the retention of staff and the first phase of security measures.

The meeting rose at 12.45 p.m.